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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,167	04/20/2005	Pierre Labeye	034299-631	8230
46188	7590	06/30/2010		
Nixon Peabody LLP P.O. Box 60610 Palo Alto, CA 94306			EXAMINER ALEXANDER, LYLE	
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			06/30/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/532,167	<b>Applicant(s)</b> LABEYE ET AL.	
	<b>Examiner</b> LYLE A. ALEXANDER	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The 4/609 amendments have added the new limitations to claim 1 " ... means operable to send back along said optical guiding plane towards the collection means ... " which are not clear as to the function of the "means." Claim 1 lines 1-5 claim luminescence is emitted by the sample in an optical guiding plane that is connected to a collection means. The Office has read these limitations as luminescent light travels from the sample to the optical guide and to the collection means. However, the lines 6-7 now claim "means operable to **send back along said optical guiding plane** towards the collection means ..." which is read as the light is being "sent back" or going in the opposite direction.

For the purposes of examination, claim 1 will be interpreted as luminescence travels from the sample to the optical guiding plane and then to the collection means.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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1. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Weisbuch et al. US 6,867,900.
2. See the appropriate paragraph of the 10/6/08 Office action for the teachings of Weinsbunch et al.
3. The 12/22/09 amendments have added new limitations to claim 1 and these same limitations are in new claim 13.
4. Both claims have been rejected above under 35 USC 112 second paragraph. For the purposes of examination, these limitations are best understood as requiring the light to travel from the sample through the optical guiding plane and to the detector. The Office maintains Weinsbunch et al. teach several embodiments, such as in figure 4a, where the light passes through an optical member to guide the light to the collector. The Office maintains Weinsbunch et al. meet all of the claimed limitations. Additionally, the claims require the light detection means to receive the luminescent light from the edge of the plane. These limitations are sufficiently broad to have been interpreted as receiving a portion of the light from the edge of the surface. Weisbunch et al. teach in column 9 lines 4+ detection of the photons by a CCD device, such as a MOS. Lines 22+ state an exemplary photodetector is shown in figure 7. The area between the taught peaks and troughs as well as the edges around the footprint of the photodetector have been read on the claimed "edges".

### ***Response to Arguments***

Applicant's arguments filed 12/22/09 have been fully considered but they are not persuasive.

Applicant state Weisbunch et al. do not teach collecting the light from the edge of the substrate. The claim language does not require all of the light to be collected from the edge, rather only that some light is collected by the edge. The Office maintain Weisbunch et al. teach a sensor that will collect light along its edges. Additionally, in Weisbunch et al. teach in figure 7, the sensor will have additional “edges” between the peaks and troughs that will collect light. For either or both of these reasons above, Weisbunch et al. meet the new limitations of collecting light from the edge of the sensor.

### ***Conclusion***

This is a continuation of applicant's earlier Application No. 10/532,167. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYLE A. ALEXANDER whose telephone number is (571)272-1254. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lyle A Alexander/  
Primary Examiner, Art Unit 1797